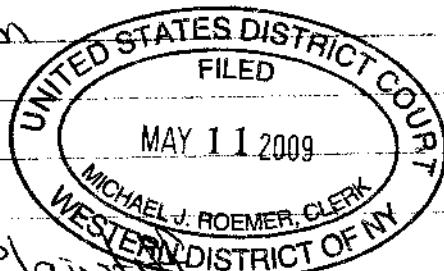


U.S. District Court
Western District Court 09 CV-0451 AGH
Civil Rights Act - 42 U.S.C § 1983
Prisoner's Complaint Form



1. Caption of Action

A. Shawn Woodward 00A6563 - Plaintiff

vs.

B. Correctional Officer Mann	9. Correctional Captain Kearney
2. Correctional Officer Rogacki	10. Correctional Counselor
3. Deputy Superintendent of Security T. Sticht	M. Szemplenski
4. Correctional Sergeant Lewalski	11. Correctional Lieutenant S. Fallon
5. Correctional Officer Camp	12. Correctional Officer Hunt
6. Correctional Officer Hojan	13. Correctional Teacher P. Bordinaro
7. Correctional Officer Scissum	14. Correctional Sergeant - I/m Claim Property Investigator
8. Correctional Chaplin Hassan	15. Correctional Superintendent R. Kirkpatrick

2. Statement of Jurisdiction

This is a civil action seeking relief and damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C § 1983. The Court has jurisdiction over the actions pursuant to 28 U.S.C. §§ 1331(3) and 2201.

3 Parties to This Action

A. Shawn Woodward 00A6563 Plaintiff
Wende Correctional Facility. P.O. Box 1187
Alden, New York 14004

3 Defendant's Information

1. Man

Correctional Officer

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187 Alden, N.Y. 14004

2. Rogacki

Correctional Officer

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187 Alden, N.Y. 14004

3. T. Sticht

Correctional Deputy Superintendent of Security

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187 Alden, N.Y. 14004

4. Lewalski

Correctional Sergeant

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187 Alden, N.Y. 14004

5 Camp

Correctional Officer

Defendant is Sued in His Official and Individual Capacity
Wende Correctional Facility P.O.Box 1187 Alden, N.Y. 14004

6 Hojew

Correctional Officer

Defendant is Sued in His Official and Individual Capacity
Wende Correctional Facility P.O.Box 1187 Alden, N.Y. 14004

7. Scissum

Correctional Officer

Defendant is Sued in His Official and Individual Capacity
Wende Correctional Facility P.O.Box 1187 Alden, N.Y. 14004

8. S. Fallon

Correctional Lieutenant

Defendant is Sued in His Official and Individual Capacity
Wende Correctional Facility P.O.Box 1187 Alden, N.Y. 14004

9. Hasson

Correctional Muslim Chaplin

Defendant is Sued in His Official and Individual Capacity
Wende Correctional Facility P.O.Box 1187 Alden, N.Y. 14004

10. Hunt

Correctional Officer

Defendant is Sued in His Official and Individual Capacity
Wende Correctional Facility P.O.Box 1187 Alden, N.Y. 14004

11. Kearney

Correctional Captain

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187. Alden, N.Y. 14004

12. M. Szemplenski

Correctional Counselor

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187. Alden, N.Y. 14004

13. P. Boedinaro

Correctional Teacher

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187. Alden, N.Y. 14004

14. I/M Property Claim Investigator

Correctional Sergeant

Defendant is Sued in His Individual and Official Capacity
Wende Correctional Facility. P.O. Box 1187. Alden, N.Y. 14004

15 R. Kirkpatrick

Correctional Superintendent of Wende Corr. Fac.
Defendant is sued in His Official and Individual Capacity
Wende Correctional Facility P.O. Box 1187, Alden, N.Y. 14004

4. Previous Lawsuit in Federal / State Court

A) No lawsuit has been filed in Federal or State Court dealing with the same facts of this lawsuit.

B) Other lawsuits filed in Federal Court:

i) Woodward v. Beam, Willis, Bartach, Muchogresso, Frist, Whitten, Zelko, D. Wolfe and Rocobello

ii) Western District Court • Docket # 07-cv-0645

iii) District Judge Richard J Arcara
Magistrate Judge Jeremiah J McCarthy

iv) October of 2007 (Date Filed)

v) Disposition: Settled and Dismissed

— also —

i) Woodward v. Mullah, Riccione, Burridge, Post, Monin, Conway and Bezio

II) Western District Court of N.Y.S

III) Docket # 08-CV-0463

IV) District Judge: Richard J. Arcara

V) June of 2008 (Date Filed)

VI) Disposition of Case: Still Pending

First Claim: On December 15th, 2008 I was moved from B-7-1 top - housing location - to B-8-1 top - housing location - due to the exercise of freedom of speech by defendant Correctional Officer ("CO") Mann. Housing / Cell location B-8-1 top was infested with roaches, living in the wall light, in the cell T.V., in the cell locker and living in the bed frame. Plaintiff, while in this cell had to sleep with the light on, each night while in this cell.

a.) The Constitutional basis for this claim under 42 U.S.C § 1983 is: First Amendment Violation by Retaliation for exercising my Freedom of Speech • Eighth Amendment Violation by Cruel and Unusual Punishment • Fourteenth Amendment Violation by Failing to provide equal protection

3. The relief I am seeking for this claim is: compensatory damages in the amount of \$ 10,000.00 and punitive damages

in the amount of \$10,000.00.

4. Exhaustion of Administrative Remedies for this Claim.

Did you grieve or appeal this claim? Yes.

Second Claim: On December 17th, 2008, plaintiff was harassed by way of retaliation by being put in for a urinalysis by defendant Deputy Superintendent of Security ("DSB") T. Sticht. While submitting to this urinalysis test my cell, B-8-1 top was being searched by Correctional Officer ("CO") Rogacki. Baby oil was poured on my personal property and legal documents were destroyed. (Ex.B: Contraband Receipt)

2. The Constitutional basis for this claim under 42 U.S.C § 1983 is: First Amendment Violation by Retaliation for Exercising my Freedom of Speech; Conspiracy to Retaliate

3. The ~~other~~ relief I am seeking for this claim is: compensatory damages in the amount of \$10,000.00 and punitive damages in the amount of \$10,000.00.

4. Exhaustion of Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes. To D.O.C.S highest level possible. (see grievance # 30053-09)

Third Claim: On January 1st, 2009 I was taken into the messhall's hallway and put on the wall for a patfrisk. By defendants Correctional Officers ("C.O.") Camp, Hojan and Scissum. Defendant Correctional Sergeant ("Sgt") Lewalski - who came from the inmate's visitor area - pulled one of the officers to the side, whispered something to him and then grabbed plaintiff by the neck, choked him and punched plaintiff in the back of the head. Sgt. Lewalski then told plaintiff that if he told anyone, he was going to the box (i.e Special Housing Unit) and would get a beatdown. Plaintiff was then taken to his cell and placed on Keeplock status (Exhibit B "Tier Assistance : Response #1").

2. The Constitutional basis for this claim under 42 U.S.C § 1983 is: First Amendment Violation by Conspiring to Retaliate for the Exercise of Freedom of Speech. Eighth Amendment Violation by inflicting Cruel and Unusual Punishment.

3. The relief I am seeking for this claim is: Compensatory damages in the amount of \$ 70,000.00 and Punitive damages in the amount of \$ 70,000.00 against all defendants in this claim.

4. Exhaustion of Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes. To DOCS highest level (see grievance # 30047-09)

Fourth Claim: In between January 8th, 2009 and January 10th, 2009, Defendants Chaplin Hassan, Captain Kearney and Lieutenant ("Lt") S. Fallon, Retaliated against plaintiff for the filing of numerous grievances by the following:

- 2) On January 8th, 2009 I received a memo from defendant Correctional Counselor ("CC") M. Szemplenski (Exhibit C) advising me that I was removed from the messhall and then on February 9 I was sent another memo from CC M. Szemplenski advising me that I was removed from the messhall on January 11th, 2009 see Captain Kearney.
- 3) On January 10th, 2009 (approximately 10 days of plaintiff already being on Keeplock status. See Exhibit - J "Keeplock Law Library Requests") Lt. S. Fallon came to interview me for grievance # 30047-09 (prison officials of claim three) after I explained to him what had took place, approximately 2 hours later he filed a "In-Voluntary Protective Custody Recommendation" dated "1-10-09 Time 8:30pm" (See Exhibit E - IPC Recommendation Report)
- 4) After I filed grievance # 30194-09 concerning these violations, I was informed by I.G.R.C - even though this grievance should have been sent straight to the Superintendent pursuant to Directive 4040 § 701.5 (c)(2) - that I had been removed from the messhall

due to "... his aggressive homosexual behavior..." [Exhibit - F (front and back)]. Grievance # 30194-09], but by word of mouth I was informed that Chaplin Hassen conveyed this "messhall problem" to Captain Heaney and from there Lt. S. Fallon made his way into this affair.

5.) The Constitutional basis for this claim under 42 U.S.C § 1983 is: First Amendment Violation by Conspiring with defendants to Retaliate for the exercise of freedom of Speech. Fourteenth Amendment Violation by failing to provide equal protection and due process.

6.) The relief I am seeking for this claim is: \$ 20,000.00 in compensatory damages and \$ 20,000.00 in punitive damages against all defendants in this claim.

7.) Exhaustion of Administrative Remedies for this claim:

A.) Plaintiff was released from I.P.C on January 23rd, 2009, but plaintiff did grieve this claim and appeal to D.O.C.S highest level (See grievance # 30087-09, 30194-09 and 30436-09).

Fifth Claim: On January 12th, 2009 at approximately 6:45 pm I was taken from my cell (i.e C-14-15 cell) to E-Block (i.e E-26-6 cell) which houses I.P.C and P.C inmates by defendant Correctional Officer Hunt of C-Block, 3pm to 11pm shift (at that time).

and a Inmate Claim for Lost/Stolen Property was filed and exhausted to DOCS highest level (See claim # 430-136-08)

Sixth Claim: Between January 13th, 2009 and January 16th, 2009 defendant Correctional Teacher P. Bordino was to assist plaintiff in his preparation of defense for plaintiff's I.P.C Hearing, which would determine if plaintiff should be Kept in I.P.C or to be released. Plaintiff requested that P. Bordino, gather (a) a copy of program history and (b) a copy of disciplinary history. These request were non-disruptive and did not pose any threat to the security of the facility. P. Bordino responded to these two request with: "Obtained FOIL Request through T.R.C".

- 2) The Constitutional basis for this claim under 42 U.S.C § 1983 is: First Amendment Violation by Conspiring with defendants to Retaliate for the Exercise of Freedom of Speech • Fourteenth Amendment Violation by failing to provide due process.
- 3) The relief I am seeking for claim is: compensatory damages in the amount of \$ 10,000.00 and punitive damages in the amount of \$ 10,000.00 against this defendant
- 4) Exhaustion of Administrative Remedies:

My personal property and other belongings were left in my cell (i.e C-14-B), but later and before C.O. Hunt brought my property to E-Block either he, himself or he allowed others to steal approximately \$137.00 worth of property, not counting what the missing food items were worth, along with the missing legal documents.

- 2) On March 31st, 2009 defendant Correctional Sergeant Claim Investigator (name unknown) who investigated plaintiff's claim on lost property, through his investigation, decided that plaintiff's claim had no merit and thus denied plaintiff lost/stolen claim.
- 3) The Constitutional basis for this claim under 42 U.S.C § 1983 is: First Amendment Violations by conspiring with defendants to Retaliate for the Exercise of Freedom of Speech • Fourteenth Amendment Violations by failing to provide equal protection and due process
- 4) The relief I am seeking for this claim is: \$20,000.00 in compensatory damages and \$20,000.00 in punitive damages against defendants in this claim.
- 5) Exhaustion of Administrative Remedies:

This claim was grieved and appealed to DOCS highest level (see grievance # 30087-09)

This claim was not grieved or appeal because since I was released from T.P.C and let back into general population. There is no appeal and Docs' Directive 4040 "Inmate Grievance Program" does not allow the grieving of this claim because it relates to "Disciplinary Hearings".

Seventh Claim: Defendant Correctional Superintendent Kelli Patrick repeatedly failed to provide plaintiff with protection to prevent defendants in this § 1983 from violating my constitutional rights by either denying my grievance or ignoring my complaint of harassment and retaliation. Also she failed to properly supervise those subordinates under him, which provided a unsafe environment for plaintiff.

2) The Constitutional basis for this claim under 42 U.S.C § 1983 is: First Amendment Violation by Conspiring with defendants to Retaliate against plaintiff for the exercise of Freedom of Speech Fourteenth Amendment Violation by failing to provide equal protection

3) The relief I am seeking for this claim is: \$10,000.00 in compensatory damages and \$ 10,000.00 in punitive damages

4) Exhaustion of Administrative Remedies:

Did claim was not -specifically -grieved or

appealed because DOCS Directive 4040 provides no provision to grieve a Superintendent, but every decision of the Superintendent can be appealed to Central Office Review Committee which I did for every claim mentioned here in.

Relief Sought

- 1) Claim One: \$10,000.00 in compensatory and \$10,000.00 in punitive damages.
- 2) Claim Two: \$10,000.00 in compensatory and \$10,000.00 in punitive damages.
- 3) Claim Three: \$70,000.00 in compensatory and \$70,000.00 in punitive damages.
- 4) Claim Four: \$20,000.00 in compensatory and \$20,000.00 in punitive damages.
- 5) Claim Five: \$20,000.00 in compensatory and \$20,000.00 in punitive damages.
- 6) Claim Six: \$10,000.00 in compensatory and \$10,000.00 in punitive damages.
- 7) Claim Seven: \$10,000.00 in compensatory and \$10,000.00 in punitive damages.

Do you want a jury trial? ✓ No

I declare under perjury that the foregoing
is true and exact.

Executed On: May 7th, 2009

By: Sh. Woodward
Sharon Woodward
00A6563 • Pro Se
Wende Corr. Fac.;
P.O. Box 1187
Alden, N.Y. 14004

EXHIBIT “B”

TEIR ASSISTANCE

INMATE: Woodward #006563

STAFF ASSISTANT: P. Bordinaro, Teacher IV

REQUESTED DOCUMENTS

1. B-Block Logbook from January 1, 2009 through January 6, 2009(where name is mentioned)
2. C-Block Logbook from January 6, 2009 through January 12, 2009(where name is mentioned)
3. Program History
4. Disciplinary History
5. Name of three (3) employee/officers who worked in Mess Hall on January 1, 2009 during the 3 P.M. to 11P.M., Supervisor/Sergant for this area.

RESPONSE

1. Logbook B-Block pg. 39: January 1, 2009, 3P.M. to 11P.M. shift, Woodward #006563 keep lock per investigation.
2. Logbook C-Block pg. 25: January 6, 2009, 10:55 A.M. Woodward #006563 came to C-Block (C-14-15). Page 55 January 12, 2009, 7:15 P.M. - inmate Woodward #006563 moved from C-Block.
3. Obtained FOIL Request through IRC
4. Obtained FOIL Request through IRC
5. Staff Names – Mess Hall January 1, 2009, 3P.M. to 11P.M. shift

SGT. Lewalski

C.O. Camp

C.O. Hojan

C.O. Scissum

Received: _____ Date: _____

Inmate Signature

EXHIBIT C

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES

MEMORANDUM

TO: SHAWN WOODWARD DIN: 00-A-6563 CELL: C 14-15
FROM: PROGRAM COMMITTEE
DATE: January 8, 2009
SUBJECT: YOUR PROGRAM ASSIGNMENT

EFFECTIVE: MONDAY, JANUARY 12, 2009

YOUR PROGRAM ASSIGNMENTS ARE AS FOLLOWS:

A.M. UNASSIGNED

P.M. HALL SQUAD

EVE



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
WENDE CORRECTIONAL FACILITY
WENDE ROAD, P.O. BOX 1187
ALDEN, NEW YORK 14004-1187
716 937-4000

BRIAN FISCHER
COMMISSIONER

ROBERT A. KIRKPATRICK
SUPERINTENDENT

MEMORANDUM

TO: **Shawn Woodward, 00A6563 C-15-22S**

FROM: **Michael Szemplenski, SCC**

SUBJECT: **Mess Hall Job**

DATE: **February 9, 2009**

A handwritten signature in black ink, appearing to read "M. Szemplenski".

On behalf of Karen Crowely, DSP, I am answering a letter you sent her dated 1/30/09.

On 1/11/09, you were removed from your mess hall assignment per Captain Kearney, for security reasons. At times, the facility must make decisions which will help to keep all inmates safe and ensure the smooth running of programs.

CC: DSP
File

EXHIBIT “D”

1-1-08

Shawn Woodward 00A6563

B-8-1 top

Law Library

RE: Keeplock Request

Dear Sir/Madam,

The above person request the following:

1) Notary Services

Notation (initials)

1/3/09

JAN 03 2009

By: Mr. Woodward
Shawn Woodward

1-5-09

Shawn Woodward
80A6563. B-8-1 top

Law Library

RE: Keeplock Request

The above person request the following:
4 of the above are identical.

- 1) Kelly v. City of San Jose, 114 FRD 653
- 2) King v. Conde, 121 FRD 180
- 3) Gesicki v. Oswald, 336 F.Supp 371
- 4) Fox v. Coughlin 893 F.2d 475

JAN 05 2009

By: Shawn Woodward
Shawn Woodward

January 8th, 2009

Shawn Woodward 00A6563
C-14-15

Law Library

JAN 08 2009

RE: Keeplock Request

The above inmate request the following:

- 1.) Fox v. Coughlin 893 F.2d 473
- 2.) Ramez v. Kerby 936 F.2d 1102
- 3.) A writing pen Just got one (1/16/09)
- 4.) White envelopes

By: Sh. Wood
Shawn Woodward

January 8th, 2009

Shawn Woodward 00A6563

C-14-15

Law Library

JAN 09 2009

RE: Keyplock Request

The above person request the following:

- 1) One manilla brown envelope for mailing legal documents,
- 2) Address to Post Office in Alden, N.Y. (Or closes city)
- 3) White envelopes
- 4) Writing Pen
- 5) Keyplock Law Library Request Forms

POST MASTER
BUFFALO MAIN POST OFFICE
ROOM 200
1200 WILLIAM STREET
BUFFALO, NEW YORK 14240

CENTRAL PARK STATION
POST OFFICE
170 MANHATTAN AVE
BUFFALO, NEW YORK 14215

By: Shawn Woodward
Shawn Woodward

January 9th, 2009

Shawn Woodward
00A6563 C-14-15

Law Library



RE: Keeplock Request

Please provide the above inmate with
the following:

- 1) Graham v. Baughman 772 F.2d 441
- 2) Gesicki v. Oswald, 336 F. Supp 371
we start a 395
outside library

By: Shawn Woodward
Shawn Woodward

January 9th, 2009

Shawn Woodward 00A6563
C-14-15

Law Library

RE: Keppel Request

The above person request the following:

- 1) White envelopes 4
- 2) brown envelope for mailing legal papers, 2
- 3) N.Y.S. D.O.C.S Directive Index TACCD 10000
- 4) Wende's Policy and Procedure Index P+P 1000
- 5) Gesicki v. Oswald 336 F.Supp 371 - Table of Contents
- 6) Jackson v. Ward 458 F.Supp 546

JAN 11 2009

By: Shawn Woodward
Shawn Woodward

Exhibit "E"

FORM 2168 (REV. 6/93)
(XEROX LOCALLY AS NEEDED).

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONAL SERVICES

UNION DE

CORRECTIONAL FACILITY

Check One

 - ADMINISTRATIVE SEGREGATION RECOMMENDATION - INVOLUNTARY PROTECTIVE CUSTODY RECOMMENDATION

1. INMATE NAME

WOODWARD, SHAWNDIN. 00A6563 CELL C-14-15

2. REASON FOR THIS RECOMMENDATION:

BASED ON INFORMATION RECEIVED, THE Muslim COMMUNITY IS GOING TO MAKE A HIT ON INMATE Woodward. TO SECURE THE SAFE OPERATION OF THE FACILITY IT IS MY OPINION INMATE Woodward SHOULD BE PLACED UNDER IPC STATUS AS HE DID NOT WISH TO SIGN IN VOLUNTARILY

1/10/09 8³⁰/AM

Date / Time

S. FallonName of Person
Making RecommendationS. Fallon

Signature

LT.

Title

3. IS INMATE CONFINED PENDING A DETERMINATION ON THIS RECOMMENDATION? YES NO

4. IF YES,

a. HOUSING UNIT OF PRESENT CONFINEMENT

C-14CELL 15

a. AUTHORIZED BY:

Lt. Fallon

NOTICE TO INMATE: A hearing will be conducted within 14 days of this recommendation in accordance with the provisions of Part 254 of Chapter V. You will be entitled to call witnesses on your own behalf provided that doing so does not jeopardize institutional safety or correctional goals.

If restricted pending a hearing on this recommendation you may write to the Deputy Superintendent for Security or his/her designee prior to the hearing to make a statement on the need for continued confinement.

Exhibit - F
(Back and Front)

1-29-09

WDE-30194-09

Shawn Woodward OOAGS63

A-2-6

T.G.R.C

RE: Retaliation through job removal

- 1.) On Jan 1st, 2009 I filed a grievance against four employees of the messhall for retaliation and assault.
- 2.) On Jan 8th, 2009 I received a Memo from Program Committee advising me I had been removed from the messhall, with no reason given. Upon further investigation this request came 8 days after I filed grievance # 30047-09 on these 4 employees who worked the 3pm to 11 pm tour on 1-1-09 (ie CB Camp, C.O Hogan, CO Scissum and Sgt Lewalski) and in Actions Requested # 4 I asked that I not be retaliated against by program removal.
- 3.) It appears that the Superintendent and Lt. Fallon either are incompetent in their duties or simply don't care. Nevertheless I request that this grievance be properly processed and investigated.

By: J. Woodward
Shawn Woodward

Response of IGRC: grievant advised that this matter has been investigated and it has been determined that a response from the captain pertaining to this grievance it stated that grievant was removed from his program assignment in the messhall due to his aggressive homosexual behavior. Because of this there is nothing that this committee can do to assist grievant being that this is a security matter and beyond the scope of this committee to ascertain.

Grievance denied.

Date Returned to Inmate 2/5/09

IGRC Members

Chairperson

Tyler Beaman

D. H. Huddelston cc

1) W. Scott S. [Signature]
3) G. J. [Signature]
[Signature]

Return within 7 calendar days and check appropriate boxes.*

I disagree with IGRC response and wish to appeal to the Superintendent.

I agree with the IGRC response and wish to appeal to the Superintendent.

I have reviewed deadlocked responses. Pass-Thru to Superintendent

I apply to the IGP Supervisor for review of dismissal

Signed _____

Grievant

Date _____

Grievance Clerk's Receipt

Date _____

To be completed by Grievance Clerk.

GrievanceAppealed to the Superintendent _____

Date _____

Grievance forwarded to the Superintendent for action _____

Date _____